

November 8, 2010

United States Environmental Protection Agency

Docket Number EPA-R03-OW-2010-0736

Public comments on the Chesapeake Bay TMDL

First, I want to express my displeasure with EPA's decision to close public comments only two business days after completing public meetings in West Virginia. While we have had the document to review, we did not have the verbal comments and presentations to accompany the written WV WIP plan and subsequent EPA evaluation. Therefore, I feel my comments cannot fully express a thorough and effective scientific evaluation of the TMDL, the state WIP, the federal response or the public meeting presentations! That being said, I will still attempt to respond to several issues I have found in the aforementioned documents and question several premises used in the specific arguments related to the TMDL process, planning procedures and coming implantation. I will make these comments in accordance with my constitutional right to be heard, but feel you have not honored my perspective by simply refusing ample time to generate a significant response.

1. Model integrity, validation and watershed representation. The model evaluation conducted January 23-25, 2008 can be found at the following:
<http://www.chesapeake.org/stac/Pubs/2ndPhaseVReportFinal.pdf>
Most notably this review has a disclaimer statement, and I quote: "The reader should be aware that model documentation required for this review was incomplete and this review is based solely on the information provided. Improved and continuous documentation of the model and data environment should be implemented as soon as possible." This review also points out the need for validation of the model, which is sorely lacking. Additionally, the review calls into question several segments of the model that lack integrity. First, the need for uncertainty analysis as a margin of safety must be addressed. While I respect that simulation runs are

demanding upon time and resources within the program, so is implementation of costly and egregious limitations on individual rights that this model will invoke. Therefore, this is not a valid reason for the lack of uncertainty analysis as a potential validation and calibration technique. After all, if you intend to enforce backstop measures that will hamper the very life of those inhabiting the watershed, it seems the least someone could do is ensure those limitations are based on accurate assessments. Long term validation is also questioned by the relatively short period of time chosen to set up model parameters. Instead, there is real doubt about the model's ability to and I quote: "this approach does not account for long-term changes and stability of the model parameters over a period that may have significant change in climate, land use and management options."

Best management practices and their efficiency rating are also questioned. The model could over estimate or under estimate efficiency ratings for practices. Also, the track record for US EPA approving efficiencies is dismal. They continue to take too long to acknowledge new BMP's and are notoriously slow at changing efficiencies for recognized BMP's. Lastly, the entire model gives credit for transferring waste out of the watershed. This does not help anybody. First, it passes the "problem" to someone else. This is not the way to deal with issues. Secondly, and most important, we should utilize the waste within the watershed on soils that test nutrient deficient. This increases the biological ability of the flora present to act as natural nutrient sinks. Secondly, we see increased ability of the soil holding capabilities of much more of the watershed's land mass. Finally, the idiocy of the model is shown in the fact that litter transferred out of the state is "gone". Even though we can ship it right across the state line, where it does not have to be accounted for nor credited to any land mass. Let's keep that fertility local, where it does not add to the carbon footprint by increasing emissions due to fossil fuel consumption to haul the waste out of the watershed in the first place.

Finally, related to the model is the fact that the non-tidal monitoring program only accounts for roughly 31-44% of the land mass for the state of West Virginia's contribution to the Chesapeake Bay drainage area. Furthermore, those four streams represent, what I contend is a skewed data set. Opequeon Creek has serious pollution issues and is not offset by watersheds (in the sampling streams) that can balance and represent a true picture of the state's contribution to the bay pollution load.

Moving along let me say also that based on these comments, the modeling data can be easily and rightfully questioned. Other assumptions made in the modeling load and background inputs only strengthen the argument. Wildlife populations continue to grow, and are increasingly being concentrated on the stream bank due to proliferation of riparian buffer zones. We have large populations of other wildlife that inhabit the watershed that are not being adequately controlled. Additional populations that cannot be "offset" include the 1.2 million human inhabitants projected to make up the net influx of people residing within the Chesapeake Bay Watershed. While I know the US EPA does not have the authority to implement basin wide comprehensive zoning ordinances, if offsets are going to be required I suggest you begin to obtain that ability.

US EPA's notion that it can further regulate large, medium and small CAFO's and AFO's to obtain additional reductions in water nutrient loadings and sediment deposition is ridiculous. Where those problems exist, then work with us to correct them. What you do not understand is the fact that all the low hanging fruit in the agricultural world has been picked. We will soon reach a point of dimensioning returns. (some contend we are already there) Precision feed management for all animals in WV will not work to decrease nutrient loading. Since no one on the WV presentation team could identify what this practice is, I question the knowledge that led to its inclusion as a backstop for the WV WIP. I know what it entails, so it is your duty now to answer, within the response to this document, how it will help nutrient loading to the bay. Please include peer-reviewed scientific studies that conclude this BMP will work on the following animal populations:

1. Mature beef cows, during the second trimester of pregnancy.
2. Stocker cattle (steers and heifers) being fed for both maximum gain and spring grass markets.
3. All ewes and does within the watershed during the entire winter feeding phase
4. Horses being fed for maintenance during the winter and those being fed for normal work conditions.
5. Mature beef cows in fall calving herds that are nursing suckling calves.

Let me conclude my comments with a few simple thoughts:

1. There are serious and long term implications tied to the TMDL implementation for the Chesapeake Bay. Model accuracy and validation concerns are compounded by serious questions about the number of and accurate representation for the four streams in the non tidal monitoring system.
2. BMP's are not being adequately captured, or credited for West Virginia and many other states. Other related problems entail a lack of partial credit grass buffers or those that do not meet the minimum 35 foot requirement. Furthermore, the bay program has a poor record of timely implementation of new BMP's or adjustment of existing efficiencies. Also, some practices seem to question logic, such as transferring litter out of the watershed, where it becomes someone else's responsibility, or worse, simply disappears when it crosses state lines.
3. The serious deficiencies evaluation by US EPA for the West Virginia Watershed Implementation Plan resulted in "aggressive" backstops. These backstops have serious implications for the state. First, the 3mG/L for nitrogen pushes the limit of existing technology. The threat of instituting measures for livestock operations like "precision feed management" for almost all animals in the watershed are indicative of a heavy handed federal dictator, not a federal partner. What is truly discerning is the fact that US EPA's own experts sent out to the state could not even identify practices called for in the proposed backstops (precision feed management).
4. Poor communication between US EPA and West Virginia officials in charge of the WIP was stated as a primary reason for confusion and many of the deficiencies in the plan. That is not

the fault of the public here in West Virginia. We should not be held accountable for problems that exist between federal and state agencies, nor should we be made to suffer as a result of those problems. It also speaks very poorly of the mindset of those at EPA that so callously dismissed questions about the timing of the public meetings and the very short turnaround time for closing of the public comment period. Keep in mind that this accelerated time frame was clear in the decision to accelerate the entire process by six months.

5. Within the entire TMDL there is no clear evidence that any state or federal agency can offset the increased pollution load expected to result from the 1.2 million person human population growth expected in the next ten years. Nor is there a clear exit strategy from the TMDL (which suggests US EPA never expects an end to the process). While that means job security for some, it holds a world of heartache for the rest of us.

In closing, let me conclude with some general thoughts, specific recommendations and finally a serious question about our society. I found the entire process for the TMDL development, the state WIP and subsequent EPA evaluation and the public comment section to be unnecessarily rushed, hurried and at times thoughtlessly presented (the response to why WV was last with only 2 business days for response). The model has serious issues, as pointed out by the EPA's own review. In fact, the entire evaluation is premised by the statement that it is based on incomplete data. Additionally, there are questions about the number of streams and percentage of the watershed represented in the non tidal monitoring system. The process has been fraught with BMP standstills for years. Even in the face of good science, the BMP team refused, for years to recognize the value of some practices (rotational grazing for example).

Poor communication and a full speed ahead mentality at US EPA are indicative of a draconian and arrogant federal program destined for failure. Instead, become partners with the good stewards of the land that make up the proud people of West Virginia. It is much easier to work with us to address these environmental challenges than it is to exert a heavy handed, top down approach that solves nothing. Show us that you are willing to meet us at the water's edge and work together to keep the water we send downstream the cleanest it has been in many many years. This will entail a cultural change at US EPA. One that will require you to begin to trust and understand the agricultural practices that we employ every day, on the land we love and where we raise our children.

Finally, you must address the scientific and technical issues I have raised with regard to the model, BMP efficiencies and definitions. Also, the non tidal monitoring system has serious reliability issues due to inadequate representation and possibly skewed data sets. A "beat the model" game benefits no one and only hampers real efforts to improve the health of the bay and the productivity of WV lands. The litter transfer program is indicative of this game. While I understand it is a key to my own state's plan, please understand that in an effort to truly address the issue at hand, I reject its potential to make a positive overall impact on the bay or our greater environment. Instead, utilize those nutrients within the watershed, where they can aid nutrient deficient soils, making them healthier and better positioned to play a larger role in helping maintain the integrity of the Potomac Headwaters.

Finally I challenge all involved to work together to find real solutions to one of the greatest problems to face the modern world. We all want clean and abundant water. Agriculture plays a key role in meeting that need. Our society faces many great obstacles; the least among them needs to be where our next meal will come from. In fact, when it even makes the list that is the beginning to the end of the greatest nation on the face of the earth!